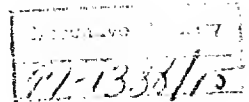


NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

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September 7, 1977



MEMORANDUM FOR:

The Vice President
The Secretary of State
The Secretary of Defense

ALSO: The Secretary of the Treasury
The Attorney General
The Secretary of Commerce
The Director, Office of Management
and Budget
The United States Representative to the
United Nations
The Administrator, Agency for
International Development
The Director of Central Intelligence
The Chairman, Joint Chiefs of Staff
The Director, U.S. Information Agency

SUBJECT:

Human Rights

Attached is the completed response to PRM-28 on human rights. Request you forward your comments to Jessica Tuchman by COB Tuesday, September 13, 1977.

Christine Dodson
Staff Secretary

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August 15, 1977

Approved For Release 2004/07/09 : CIA-RDP91M00696R000100030020-1

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PRESIDENTIAL REVIEW MEMORANDUM/NSC 28: HUMAN RIGHTS

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PRESIDENTIAL REVIEW MEMORANDUM/NSC-28: HUMAN RIGHTS

This study is submitted in response to the NSC memorandum of May 20, 1977, requesting a review of United States foreign policy with respect to human rights. The major sections of the study are keyed to the NSC memorandum.

This study takes as its starting point the human rights policy articulated consistently by the President since his inauguration. Decisive actions have been taken to advance this policy both by the President and by the Secretary of State. Reactions have occurred around the world.

Day-to-day decisions which must be taken to advance the cause of human rights will require a careful weighing of the circumstances in individual countries. The study refines the overall thrust of our policy, evaluates the instruments at our disposal to carry it out, and considers costs, risks, and tradeoffs.

I. Definition of U.S. Objectives in the Area of Human Rights.

A. Overall Objective.

The overall objective of our human rights policy is to increase observance of human rights by governments.

1. Definition of Human Rights.

Generally accepted expressions of these rights are found in the United Nations Charter and the Universal Declaration of Human Rights, adopted by the United Nations in 1948. To maximize our effectiveness, our policy should be directed to the most fundamental and important human rights, as set forth below, and should include the right to enjoy them without distinction as to race, sex, language, or religion:

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First, the right to be free from governmental violations of the integrity of the person: such violations include torture; cruel, inhuman or degrading treatment and punishment; arbitrary arrest or imprisonment; denial of fair public trial; and invasion of the home ("the first group").

Second, economic and social rights: the right to be free from government action or inaction which either obstructs an individual's efforts to fulfill his vital needs for food, shelter, health care and education or fails adequately to support the individual in meeting basic needs ("the second group"). Fulfillment of these rights will depend, in part, upon the stage of a country's economic development.

Third, civil and political liberties: these include freedom of thought, of religion, of assembly, of speech, of the press; freedom of movement both within and outside one's own country; and freedom to take part in government ("the third group").

The President and the Secretary of State have expressly included the second and third groups within the general purview of the Administration's human rights policy. The rationale and the implications of including these rights merit discussion.

Incorporation of the second group of rights in our policy has particular implications for its application to the Third World. A policy which subordinated these rights would not only be inconsistent with our humanitarian ideals and efforts, but would also be viewed unfavorably in those countries where the tendency is to view basic economic and social rights as the most important human rights of all.

As for the third group -- civil and political rights -- a policy that ignored them would be so narrow in construction as to sacrifice overall coherence. It would also be untrue to our heritage and basic values. We do not accept the charge that by promoting these rights we seek to impose eighteenth century, Western ideas on non-Western societies where they have no roots or relevance. These rights have been espoused in principle by virtually all governments and are of worldwide

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significance as a matter of practice. There is no necessary inconsistency between political and civil rights on the one hand and economic development on the other.

Reliable and lasting protection against violations of the first and second groups can only come with the development of institutions that protect broadly defined civil and political liberties. To stop the torture of one person or to alleviate hunger in one family is important. To build institutions that safeguard against torture and provide a steadily improving standard of living must be our long-term goal. In espousing the third group of rights, there is a particular need, however, to avoid parochialism. Our goal is to enhance basic human rights in diverse societies; we do not seek to destabilize governments or remake societies in our image.

The three groups of rights should be considered equally important. However, that does not mean that, as a practical matter, they will be pursued in the same way or over the same time span. In countries where the first group of rights is denied or threatened, the protection of those rights has obvious priority, since human life and fundamental human dignity are threatened. In countries where the first group of rights is generally observed, but political and civil rights are abridged or non-existent, our policy should emphasize our support for those rights. Promotion of economic rights is, for the U.S., primarily a matter of helping to stimulate economic development. This includes cooperation with and contribution to bilateral and multilateral foreign assistance efforts as well as other measures (e.g., in trade and finance) designed to strengthen the world economy. We should also encourage other countries to follow policies which will advance their economic and social development.

2. Timeframe.

In seeking greater respect for all these rights we must keep in mind the limits of our power and the intractability of the problem. Our ability to change human rights practices in other societies is limited, even if we exert substantial efforts. Thus, our expectations must be realistic, and we must concentrate on encouraging the maximum possible evolutionary movement.

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There will, of course, be certain exceptional circumstances in which we will seek dramatic improvements, as in our efforts to promote majority rule in Rhodesia.

Realistic timeframes will differ by country and by the type of human rights violation involved. The timeframes within which to expect improvements in group one rights should, in general, be considerably shorter than those in groups two and three.

B. Reasons for Pursuing the Overall Objective.

There are sound reasons, based in national interest as well as our moral tradition and legal obligation, for encouraging an increase in the respect that governments accord to human rights. Pursuit of this objective:

(a) helps fulfill a moral obligation that we have incurred by virtue of our heritage and values and our legal obligations under the United Nations Charter;

(b) strengthens the rule of law and respect for agreements by promoting the authority of the human rights recognized in the United Nations Charter, the Universal Declaration of Human Rights, the Helsinki Final Act and other international instruments and by furthering the goal contained in U.S. laws authorizing foreign assistance that our foreign policy promote increased observance of internationally recognized human rights by all countries;

(c) substitutes, in determining our attitude toward Third World governments, a standard based on governmental behavior toward people for an increasingly outmoded Marxist-non-Marxist standard, and assists in the philosophical debate with the Soviet Union over the type of society worth developing;

(d) strengthens domestic support for our foreign policy by reflecting the moral and ethical values of our people;

(e) promotes the fundamental long-term American interest in a world of nations whose systems of government and societies reflect individual freedom and dignity.

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C. Intermediate Objectives.

In order to attain the overall objective set forth above, we should seek to achieve the following broad intermediate objectives:

(a) heighten international and national awareness of human rights concerns in order to steadily increase the norms of acceptable conduct in the human rights field.

(b) attract international support for our efforts;

(c) demonstrate that countries which violate basic human rights do so at a cost in their standing in the international community. Conversely, that countries with positive records or significant improving performance benefit tangibly and intangibly from their efforts;

(d) promote and strengthen the efforts of international institutions as well as non-governmental organizations to protect human rights;

(e) ensure that our own conduct measures up to the same standards we apply to others;

(f) seek a rapid end to patterns of gross governmental violations of the person, particularly murder, torture, and lengthy imprisonment for political offenses.

(g) seek to increase U.S. resources available for alleviating human suffering, particularly with regard to refugees.

D. Specific Objectives.

Achievement of the overall objective and the broad intermediate objectives set forth above will entail pursuit of specific objectives in particular countries and international institutions. The identification of these objectives requires detailed analysis of the human rights situation, as well as other relevant factors, in other countries and of the possibilities for action. This effort is presently underway at both the Department of State and posts abroad.

While certain specific objectives are already apparent -- such as an end to the state of seige in Chile, the release of the Myongdong defendants in Korea, majority rule in Rhodesia, increased emigration of minorities from Eastern

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Europe -- others will only emerge after additional analysis. The pursuit of certain human rights objectives, such as majority rule in Rhodesia and implementation of the Helsinki Final Act, will also serve to enhance political and other policy goals.

E. Recognizing the Costs of a Human Rights Policy and Relation to Other Foreign Policy Objectives.

As the promotion of human rights becomes one of our basic foreign policy tenets, we are faced with the task of relating human rights policy to our other major foreign policy concerns. It has been, and will continue to be, a difficult task. For we are adding an emphasis on human rights to an already wide range of policy goals, many of which, in the nature of things, come into conflict with one another at times.

Day by day, country by country, human rights considerations are being weighed against other foreign policy objectives, such as the maintenance of NATO strength and solidarity, strategic arms limitation, peacekeeping in the Middle East, control of nuclear proliferation, and normalization of relations with the PRC, Vietnam and Cuba.

While there is no necessary inconsistency among these objectives, they will, on occasion, compete for primacy. Resolution of the conflict between or among them will depend on the facts of the situation at hand, which should be addressed with openness and candor. There will clearly be instances in which efforts to achieve our human rights goals will have to be modified, delayed or curtailed in deference to other important objectives. But by the same token, making human rights a principal goal of our foreign policy means that promotion of human rights will not be viewed as a lesser objective. Even

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when other objectives outweigh human rights, our policies will be implemented in a manner that promotes human rights to the extent possible.

Adoption of an affirmative human rights policy will carry with it a variety of risks, choices, tradeoffs and potential costs:

-- Our actions and statements regarding human rights objectives may involve criticism of conditions in another country, which may be viewed as either offensive or threatening by the government concerned and, in certain cases, by some segments of the population. The resulting strain in our relations with that government may have a negative impact on other objectives. The sensitivity of the Soviet Union to our human rights initiatives represents a manifestation of the possible risks involved, in this case a strain in crucial East-West relations. Nevertheless, in many countries, positive responses to our human rights initiatives have occurred, are occurring, or are possible. As they do, relations will improve.

-- Since some Western democracies, while supporting our general principles have not agreed with us on certain tactics, there is a risk that certain of our initiatives, if not properly coordinated, could lead to differences with our NATO allies. These differences could, of course, be exploited by the Soviet Union.

-- Our criticism of human rights violations may provoke a greater degree of repression by a government, either because it fears our initiatives will encourage dissident groups to act with boldness or because it wants to demonstrate disdain for our policy. Of course, such a reaction bears its own internal political cost.

-- Our methods may adversely affect multilateral institutions or ongoing programs, particularly in the economic area, which have their own U.S.-endorsed objectives.

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In particular, using our vote in international financial institutions to encourage respect for human rights might lead others to seek to block assistance on other and purely political grounds. On the other hand, failure to raise human rights concerns could jeopardize domestic support for these institutions. More broadly, we will have to remain alert to possible costs in terms of developing country cooperation on North-South issues.

-- Inevitable inconsistencies in our human rights policy around the world will expose us to criticism. Allies such as Korea, Iran and the Philippines, for instance, cannot be immune from some application of the policy without endangering the integrity of the policy; neither can powerful adversaries like the Soviet Union. But whatever qualifications on the application of our policy toward these or other nations we deem necessary will invite charges that our policy lacks credibility.

-- The implementation of our policy is likely to provoke reciprocal criticism of domestic conditions in this country, not only from communist nations but also from friends. Our response should be to welcome constructive criticism, noting that our system provides many remedies for social and economic ills.

-- The pursuit of our human rights objectives will in some cases result in reduction of security assistance to, and cooperation with, offending governments. In some instances where our own defense posture is involved, U.S. security interests may be adversely affected.

-- The human rights effort could involve significant dollar costs. While our commitment to a substantial increase in economic assistance is not solely a function of our human rights policy, it does relate to our commitment to the enhancement of economic and social rights.

F. Strategies for Pursuing our Human Rights Objectives.

Our human rights objectives obviously cannot be pursued everywhere, at once, and in the same manner. While no two

countries' situations will ever be identical, there are certain logical groupings of countries which can be useful for analysis and discussion.

1. Western Democracies.

We should support and reinforce human rights values in the Western industrial countries (including Canada, Japan, Australia, New Zealand) and encourage these countries to support our human rights initiatives. We are now at a historic point at which all NATO and Western European countries are democracies, and a major effort should be made to reinforce democratic tendencies, particularly in countries that have only recently established or re-established democracy, such as Turkey, Greece, Portugal and Spain.

2. Third World Nations.

Efforts should be made to reinforce positive human rights and democratic tendencies in the Third World, particularly in states that already have demonstrated good or improving human rights performance. This support is particularly important with respect to countries that are vulnerable to external or internal threat, or which face severe economic problems. We should provide increased symbolic support as well as increased economic assistance, as appropriate, and cultural, educational and scientific exchanges. We should also seek support for U.S. human rights initiatives by these countries.

Our efforts with respect to Third World nations where a human rights tradition has been disrupted should seek to encourage return to former norms and to discourage the arbitrary use of power. In such societies, the populace may be receptive to various forms of assistance geared to support human rights values. Educational and cultural programs directed to human rights supporters might be especially effective.

In Third World nations where human rights values have never taken firm root, we should discourage the arbitrary use of power and promote a more equitable and humane social and economic order. In some cases, it will be more realistic to expect concrete achievements with respect to the first and second groups of rights than with respect to the third.

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An important aspect of our policy should be to ensure that our relations with countries that continually violate human rights are correct, in keeping with our other interests, but not close. The tone we set in our relations is important to the credibility and thus to the success of our overall policy.

3. Communist States.

With respect to the communist countries, our human rights effort should remain firm and consistent but non-polemical. We should recognize that major changes in communist regimes and their human rights practices will not take place in the short term; they are only likely to occur, if at all, gradually as the basic political and social structures of these countries change. On the other hand, we believe that U.S. and world opinion and U.S. actions can positively influence trends in the long term and encourage improvements in limited but important areas in the short term. We should make it clear that our commitment to human rights is basic to our foreign policy. This view should be communicated to the people of these countries as well as their governments. We should emphasize implementation of the Helsinki Final Act.

Because of its pivotal importance, the Soviet Union is a special case meriting a separate word. Soviet governmental response to our emphasis on human rights has been negative and increasingly sharp, explicitly suggesting that detente is threatened by our policy. To what extent the Soviet leadership truly feels their system and their hold in Eastern Europe is endangered is unclear; but their objective appears to be to bring about a significant decrease in our public advocacy of human rights, thus reducing its most embarrassing aspects for them, on the pretext that a "one-sided" U.S. advocacy of human rights and respect for state sovereignty cannot co-exist.

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There is no evidence that the U.S. human rights policy has affected Soviet bargaining positions in important negotiations, even if the atmosphere surrounding negotiations is tense. Our substantive position on arms control has and likely will continue to determine the Soviet response on this critical issue. Similarly, we believe that the Soviet Union will continue to pursue its perceived interests in arms control, trade, scientific and cultural exchanges and other areas of our bilateral relations, regardless of our advocacy of human rights. The inevitable strain of a massive arms race, the need to take increasing consumer demands into account, and the potential for unrest in Eastern Europe means the Soviet Union cannot easily pull away from MBFR or SALT negotiations, technological transfer agreements or commercial credit arrangements.

The USSR is continuing efforts to cooperate with the U.S. private sector, despite the Jackson-Vanik amendment. This indicates that the Kremlin may implicitly recognize that Soviet economic concerns will make it difficult to delay forward bilateral movement for long periods of time because of U.S. human rights advocacy.

With proper management, our security interests and our human rights concerns both can be accommodated in our relations with the Soviet Union. In fact, failure to execute an appropriate human rights strategy with proper balance will detract from the political value of our human rights policy elsewhere in the world.

The potential normalization of relations with China and Cuba will place some strain on the credibility of our human rights policy, for in both cases other considerations are likely to govern in the short term. As relations are established, we will be expected to take human rights initiatives. We should now be examining the methods we will utilize to achieve specific human rights goals. These would probably fall, at the beginning, in the areas of family reunification and, with respect to Cuba, the treatment and disposition of political prisoners. We should recognize that with respect to human rights we will have little, if any, leverage or influence with the PRC at this stage.

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4. Gross Violaters of Human Rights.

Governments that have a consistent record of gross violations of human rights should be dealt with as special cases, and our policy should generally be to bring to bear international opinion and concerted action by the world community to bring about improvement. Obviously, this should be done only in flagrant cases after attempts to encourage evolutionary improvement have been spurned. Even in such cases, however, there is no necessary reason why formal diplomatic relations should not be maintained.

II. Identification of "a Consistent Pattern of Gross Violations of Internationally Recognized Human Rights."

The phrase, "a consistent pattern of gross violations of internationally recognized human rights" derives from terminology in Resolution 1503 of the UN Economic and Social Council, dated May 27, 1970, and has been used in Sections 116 and 502B(a)(2) of the Foreign Assistance Act of 1961, Section 28(a) of the Inter-American Development Bank Act, and Section 211(a) of the African Development Fund Act. The general purport of all these statutory provisions is that we should not provide assistance to governments that engage in such conduct.

The legislative history of our statutory provisions does not indicate the meaning Congress attached to the concept of a "consistent pattern," and there are no judicial decisions interpreting the phrase. By its terms the language excludes isolated events and incorporates the dimensions of time as well as repetition. Thus, frequently repeated actions over a relatively short period of time would appear to be covered as would somewhat less frequent but regular violations over a relatively long period of time.

While "internationally recognized human rights" would include, inter alia, all of the rights in the Universal Declaration of Human Rights, it appears from the legislative history that in using the phrase and combining it with the concept of "gross violations," Congress intended to cover mainly the right to be free from governmental violation of the integrity of the person, i.e., the first group of rights discussed above.

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Once a determination is made that a country has engaged in a consistent pattern of gross violations of internationally recognized human rights, certain important questions arise. For example, is the determination binding as to future decisions with respect to that country? If that would depend on whether there had been substantial intervening events, by what standard ought those events be judged? Further, would a determination as to one country have precedential effect as to other countries?

These are not easy questions. While answers can no doubt be devised, the questions point up the limitations in the human rights context of requiring uniform actions pursuant to a statutorily-prescribed standard of conduct. There are vast differences among human rights conditions in various countries, and what may rise to the level of offensive conduct in one country may not be properly so characterized in the setting of another country with different circumstances, a different history, and a different trend. To be realistic and effective, our policy must take account of such differences. That will therefore be difficult if we are required to take the same action -- e.g., a "no" vote on an IFI loan -- with respect to different countries, even though our own best assessment of the circumstances in such countries might indicate that the mandated action would be inappropriate or that other actions should be taken instead.

III. Evaluate Actions Which U.S. Could Take to Improve Human Rights Conditions.

The range of actions we can take to advance our human rights objectives is examined below. Of primary importance is the need to evaluate the human rights situation in individual countries and to consider the various policy instruments at our disposal in the light of our own foreign policy objectives in those countries. These evaluations, which are underway, will apply the factors Secretary Vance

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cited in his April 30, 1977, Law Day speech as important to the determination of human rights policy in particular instances.

A. Diplomatic actions, public statements, and various symbolic acts.

Diplomatic exchanges, ranging from informal talks with officials or government leaders to formal demarches, are a valuable tool. Through them we can make our human rights policy understood by other governments and provide notification of the sanctions or incentives that may flow from our policy. As a general proposition, our actions with respect to the human rights conditions in any country ought to begin with such approaches.

Diplomatic actions, of course, extend beyond demarches. In flagrant cases we may find it advisable and effective to reduce the level of our presence in a given country.

Public statements can also promote our human rights goals. By conveying publicly what we have previously said privately, they add the force of world opinion to our efforts. Statements can be critical of particular violations or general attitudes, or they can commend positive conduct or attitudes. Critical statements will be used sparingly to preserve their effectiveness. A constant stream of criticism of foreign governments may cause the U.S. ultimately to be ignored as a tiresome and ineffective international scold. While public statements are an extremely important tool, they must be used with skill and discrimination.

Symbolic acts can in certain circumstances be even more effective than public statements and may not present the same risks. They can encourage countries with good human rights' records to persist. Invitations to make state visits, Presidential letters, goodwill missions, special visitor programs and the like are highly valued abroad. Directing them to countries with good or improving human rights' records will send a very effective signal.

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There will clearly be circumstances in which we should use symbolic acts to identify the U.S. with representatives of human rights organizations, or with the victims of human rights abuses who seek or would welcome such identification. We not only demonstrate thereby our concern and communicate our support, but we may also add an element of protection to the organizations and individuals involved. Of course, there will be circumstances in which such symbolic acts on our part would actually increase the risks to such organizations and individuals.

B. Changes in Levels of Security and Economic Assistance and Food Aid.

If we genuinely seek to promote economic and social rights, we should work to meet the Administration's objective to increase substantially both bilateral and multilateral foreign economic assistance by 1982.

Where the promotion of human rights is concerned, increases or reductions in the security and economic assistance (including food aid) that we provide to individual countries are more decisive and visible measures than diplomatic actions, public statements or symbolic acts. However, because of the sensitivity of recipients and the unpredictability of their reactions, reductions in aid ought not be considered lightly or until less drastic measures have been taken. Ideally, we would like to be perceived as working closely with the developing nations that are pursuing equitable growth policies which protect and promote human dignity. To the extent we are so perceived, our human rights policy will be strengthened.

Obviously we do not write on a clear slate when we consider reductions in assistance in view of the various statutory provisions which direct that assistance be used to promote human rights, and

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except in certain exceptional cases, be withheld when a consistent pattern of gross violations emerges.

Our military and economic assistance is generally valued highly by recipient governments. Thus it is appropriate, circumstances permitting, that we should seek to obtain improved human rights conduct in return. It should be noted that in many cases aid is extended in return for other considerations, e.g., in some cases it is called for by base rights agreements. In other cases, our assistance may be small in amount and thus easily dispensed with or replaced from other sources. In such cases our aid may afford us only limited leverage on human rights issues.

Certain general costs and benefits apply to the use of both military and economic assistance as sanctions and incentives with respect to human rights. The benefits include underscoring the seriousness and determination with which we are pursuing our human rights objectives, avoiding where feasible the inconsistency of providing substantial material assistance to repressive governments, and demonstrating tangibly that it can be costly to violate human rights and valuable to respect them. The costs include possible damage to U.S. national security interests, and to our general political and economic interests; disruption of established assistance relationships; curtailment of activities directly supporting the second group of human rights; possibly penalizing groups of individuals who bear no responsibility for the abuses of their governments; and the risk that some recipient governments from whom we withhold assistance may be in a position to retaliate by withholding resources that we vitally need.

As a very general proposition, reductions in military assistance ought usually to precede reductions in economic assistance. Conversely, increases in economic assistance ought usually to precede increases in levels of military assistance. ✓

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1. Security (Military) Assistance.

Our military assistance is a matter of great sensitivity both to the governments that receive it and to those segments of the American public and the Congress who watch it closely as an index of the priority we place on human rights objectives in relation to our other foreign policy concerns. Moreover, under Section 502(B) of the Foreign Assistance Act of 1961, as amended, we have a legal obligation to ensure that our security assistance programs are formulated and conducted in a manner that will promote and advance human rights and avoid identification of the U.S. with governments that violate human rights.

Perhaps more than any other single factor, U.S. military assistance is seen as implying U.S. support for the governments that receive it. To be perceived as supporting a repressive government inevitably exacts costs in terms of the consistency and the credibility of our human rights policy. Moreover, some types of arms we provide, finance or license can be used by a recipient government to carry out or undergird repressive practices. (Although such use is prohibited by U.S. law, our ability to prevent it is limited.)

A full discussion of the criteria for providing military assistance is beyond the scope of this study. However, we should remember that most countries (certainly including our own) believe strongly in the right to an adequate defense. A careful evaluation of the interests at stake, and the potential benefits to be gained, is needed in each case. Where there are vital national security interests at stake which require a continuing military relationship between the U.S. and the recipient, and where the recipient's human rights record is considered to be acceptable or improving, we should consider sympathetically approving arms transfers that are consistent in other respects with the President's arms transfer guidelines. Conversely, where those factors are not present, we should view such requests unsympathetically.

* Security assistance includes grant material aid, grant military training, FMS and licensed commercial arms sales and FMS financing of arms sales through credits and loan guarantees. (Security supporting assistance is discussed in the section on bilateral economic assistance below.)

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Military assistance can be used as a sanction or incentive to promote human rights by altering the size or functions of our military advisory contingent; by altering the level of training grants; by altering the quantity of arms transfers; and by altering the types of arms transferred. Reduction or elimination of military assistance may have little direct impact on a country's human rights performance; in many instances the country will be able to turn to an alternate supplier. However, when a decision is made to reduce military assistance as part of an overall strategy, with advance warning communicated through diplomatic channels, some improvement of human rights performance may be possible in specific countries. Governments and military forces in many regions desire close relations with the U.S., and a firm human rights policy, which demonstrates that benefits such as military assistance are placed at risk in the absence of human rights progress, will be a continuing element in their decision-making.

Some argue that the strongest signal that could be sent to offending governments would be to alter the relationships that have been built up over the years between our military and the military of other countries, some of whom are responsible for repressive practices, by reducing the size of our military contingent and our training (IMET) grants. They do not believe such action would impair our security interests; indeed, they argue that we do not have legitimate security interests in many of the 57 countries that receive our military assistance. (46 of the 57 countries receive IMET assistance.) Others believe that reducing our military presence will reduce our ability to communicate with and influence segments of the governments whose policies we are trying to change. They believe we should increase the IMET program on a worldwide basis, particularly in certain selected countries now prohibited from participating in it, because they believe IMET has proven successful in fostering pro-U.S. attitudes in foreign military students. This complex issue requires further study.

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2. Bilateral Economic Assistance, Trade and Investment Programs.

U.S. bilateral economic assistance is provided in several forms. It includes direct humanitarian assistance (disaster relief and PL 480 Title II), assistance programs directed primarily to benefit the needy, other economic development programs which benefit the poor majority less immediately, food aid given to support development (PL 480 Title I), and security supporting assistance (assistance extended for primarily political reasons in the form of grants, budget support, commodity loans and development projects).

Humanitarian assistance, such as International Disaster Assistance and PL 480 Title II, is designed to alleviate human suffering by responding to emergencies caused by manmade or natural disasters. As such it directly promotes the most basic human right -- that of survival -- and should not be considered for use as leverage in supporting broader economic, political or social rights.

The basic objective of our bilateral assistance program continues to be to meet the needs of the poor, even in those countries where serious human rights problems exist. This policy is reflected in law -- the original Harkin Amendment -- which states that AID programs do not have to terminate in such countries where AID assistance "directly benefits needy people".

As a result of the "New Directions" in development assistance, mandated by Congress, the focus of regular U.S. bilateral economic assistance has increasingly been directed to meeting the basic human needs of the poor majority in the developing countries, such as nutrition, health care, education and human resource development, and less on large-scale capital transfers for major infrastructure development. Such programs, which assist the poor majority in developing countries gain access to participation in decisions which shape their lives, strongly and independently promote group two economic rights, as well as create a climate supportive of a broader observance of political and social rights.

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As a rule then, bilateral development assistance which directly benefits the needy should not be used as a policy instrument to sanction a government for its human rights violations. (Where assistance benefits the needy, but a country's human rights record is poor, we should consider the extent to which our aid is or can be provided through non-governmental institutions thus reducing our identification with the government.) There may be instances, however, in which a particular government's human rights violations are so flagrantly gross and systematic that the need to disassociate from that government outweighs the development assistance goals in that country. Such a balancing of considerations will require case-by-case analysis.

Reducing economic assistance that does not directly benefit the needy is a more appropriate means to disassociate the U.S. from a repressive or corrupt government, but such bilateral programs are now the exception.

Security supporting assistance is extended to a limited number of countries in which the U.S. has special interests of high political priority. Currently, 80% of our security supporting assistance goes to Israel and the three confrontation states in the Middle East. Food assistance under PL 480 Title I can also be used to leverage human rights improvement. However, the distribution and terms of Title I aid have traditionally been affected by political factors. In addition, its use would entail the considerable political risk of appearing to provide or deny food to hungry people in order to achieve U.S. political objectives.

An increase in aid that directly benefits the needy can be an effective way to encourage positive human rights conduct. Such increases directly promote our overall human rights objectives by contributing to the fulfillment of vital human needs. In addition, assistance programs designed to encourage wider participation in the economic life of a nation can encourage creation of an underlying climate supportive of a broader observance of human rights. Increasing assistance within existing budget levels to support countries with improving human rights records is possible,

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but difficult to accomplish. We would expect such increases to be made very selectively. Increases in bilateral economic assistance on human rights grounds should normally be considered on an annual basis to support long-term improvement in human rights conditions and to meet legitimate development needs. In shaping the overall bilateral aid budget, the pattern of allocation should reflect our human rights policy as well as more traditional economic development criteria.

3. Trade and Investment Programs

The U.S. is a strong proponent of liberalized trade, most importantly because discriminatory arrangements established by other major trading countries generally damage U.S. trade. The power of the President to use trade measures to favor or discriminate against a country on human rights grounds is limited by international and domestic legal obligations to grant non-discriminatory treatment to most nations. Moreover, singling out particular countries for punitive action is very difficult to accomplish "cleanly". Other countries' trade and economic interests almost inevitably become involved, risking a chain reaction which may adversely affect our economy. Only where there has been a broad international consensus that a country is guilty of particularly egregious conduct have a sufficient number of countries coordinated their trade sanctions so as to have a significant economic impact on the offending regime.

Most Favored Nation Treatment. Under current U.S. domestic law (19 U.S.C. 1202), all non-communist countries, as well as Poland and Yugoslavia, are accorded most-favored nation (MFN) tariff treatment. There is no existing domestic legal authority to withdraw MFN tariff treatment from any of these countries, although section 301 of the Trade Act authorizes applying discriminatory duties to an individual country in response to a proven unfair trade practice.

Furthermore, such a sanction, even if authorized by U.S. law, would violate our international obligations if applied to any of the forty-three countries with which we have treaties of Friendship, Commerce and Navigation

or any of the one hundred six countries which are parties to the General Agreement on Tariffs and Trade (GATT) or to which that agreement is applied de facto.

Beyond these legal limitations, we believe that our trade policy interests, as well as practical considerations, militate strongly against using withdrawal of MFN treatment as a sanction against human rights violations. Withdrawing MFN would set a damaging precedent. It is conceivable that some countries, faced with domestic pressures for increased protectionism, might cite foreign policy objectives as a convenient justification for discriminatory restrictions.

Generalized System of Preferences. The United States accords preferential treatment (i.e., duty-free entry) for certain products of about 100 developing countries under the Generalized System of Preferences (GSP) authorized by Title V of the Trade Act of 1974. Under the Trade Act, the President has the authority to designate any developing country meeting certain requirements as a beneficiary of GSP. He also has the authority to terminate GSP benefits for any country upon sixty-days notice. The benefits of GSP are a unilateral grant authorized by a GATT waiver and are not subject to the same rights of compensation or retaliation provided in the GATT with respect to MFN treatment. Consequently, the President could use the GSP as a human rights sanction without obtaining new legislation and without violating our international obligations.

Denial of GSP benefits as a sanction would not entail nearly the same adverse trade policy consequences as in the case of the long-enshrined MFN principle. The denial of GSP to Uganda, in part because of human rights concerns, generated no adverse reaction. However, since GSP benefits are limited, it remains to be seen whether the threat of termination or denial of benefits would induce greater respect for human rights. Widespread denial (or withdrawal) of GSP benefits might call into question our trade commitment to a generalized system.

Export-Import Bank and OPIC. Government programs supporting U.S. exports are administered by the Export-Import Bank (Ex-Im), while the Overseas Private Investment Corporation (OPIC) encourages U.S. private investors to invest in developing countries through its political risk

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insurance and finance programs. Ex-Im and OPIC can be distinguished from bilateral assistance programs in that they facilitate U.S. business activities in foreign countries. In some cases Ex-Im does deal directly with foreign governments. OPIC does not provide financial subsidies to LDC governments, but does enter into umbrella agreements with them. OPIC insures U.S. private investment in LDCs, particularly the lowest income LDCs, thereby complementing the development assistance objectives of the U.S.

Ex-Im and OPIC programs normally will not be appropriate vehicles for influencing changes in the human rights practices of governments. In cases of gross violations, where we do not wish to be associated with the government in question, it may be desirable to curtail them. In the rare cases where we might resort to curtailment, our action could have a significant impact on the government in question.

C. Initiatives in International Financial Institutions.

U.S. concern with promoting human rights through the international financial institutions (IFI's) became explicit last spring with the passage of the Harkin Amendment to the authorizing legislation for the Inter-American Development Bank (IDB) and the African Development Fund (ADF). That amendment requires that the U.S. vote "no" on loans or assistance to a country that "engages in a consistent pattern of gross violations of internationally recognized human rights . . . unless such assistance will directly benefit the needy people in such country."

The Harkin Amendment will in all likelihood soon be replaced by language on this year's IFI authorizing legislation. As it emerged from conference, the legislation instructs the USG through its Executive Directors to seek to channel assistance away from countries whose governments engage in a consistent pattern of gross violations of human rights or provide refuge to airplane hijackers; to use our "voice and vote" in seeking to channel assistance towards projects which address basic human needs; and to consider a number of factors related to human rights concerns e.g. specific actions taken on bilateral assistance on human rights grounds, extent to which the assistance benefits needy people, status of a country regarding nuclear proliferation, and responsiveness of governments in providing better accounting of MIAs.

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Where other means have proven ineffective, the legislation requires us to oppose loans (i.e., vote "present," abstain, or vote "no") to countries which engage in a consistent pattern of gross violations of internationally recognized human rights unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such countries or unless the President certifies that the cause of international human rights would be more effectively served by actions other than voting against such assistance.

This legislation is fully compatible with our policy to use our membership in the IFIs to promote human rights.

The new IFI legislation also specifies "the Secretary of State and the Secretary of the Treasury shall initiate a wide consultation designed to develop a viable standard for the meeting of basic human needs and the protection of human rights and a mechanism for acting together to insure that the rewards of international economic cooperation are especially available to those who subscribe to such standards and are seen to be moving toward making them effective in their own systems of governance." We will need to develop a strategy for implementing this requirement.

While most of the discussion to date concerning human rights and the IFI's has focused on particular loans and votes, it is also important to develop a long-term approach whereby we seek an overall reduction in IFI lending to countries that consistently violate human rights, excepting loans for the needy. Our policy in this regard should parallel our bilateral aid policy (see pg. 20, para. I).

Support from the other industrialized democracies for our efforts to use our voice and vote in the IFI's to promote human rights has been minimal to date: only Canada and Sweden have indicated some support. A number of leading LDCs -- including Egypt and India -- have questioned the legality of U.S. actions on human rights in the IFI's.

The articles of all the IFI's contain a provision not different in substance from the following language in the World Bank's articles: "The Bank, its officers and employees should not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of . . . (the recipient government). Only economic considerations shall be relevant to their decisions" (Art. 10, Sec. 10).

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The Legal Adviser of the State Department believes that the prohibition against interference in the "political" affairs of members may be interpreted validly as not applicable to the consideration of human rights factors, particularly group one rights, which are more fundamental than "political" matters and therefore not within the scope of that term. The injunction to weigh only economic considerations in making decisions can in many, if not most, cases be satisfied by relating the human rights situation in a country to economic issues. For example, welfare and other social concerns are, broadly speaking, economic as well as human rights considerations.

It is only fair to state, however, that other IFI members may very well resist this line of reasoning. Some may argue that our negative vote or abstention on human rights grounds raises serious questions of compatibility with an IFI charter. Others may be encouraged to condition their participation on what we would consider to be "political" grounds, citing our action as a precedent. For example, the Arab countries might raise matters concerning the Palestinians or the allegations they have made elsewhere concerning Israel's human rights practices in the occupied territories. We should consider whether or not it would be possible and in our interest to seek amendments to the charters to include human rights considerations.

Our interest in promoting human rights will be best served by adherence to the following guidelines:

-- There is a presumption that our votes in the executive boards of the IFI's in support of our human rights policy should be used sparingly and designed to advance the overall strategies we will work out for individual countries.

-- When we plan to cast a non-affirmative vote or make a statement of concern for or condemnation of human rights practices in the IFI's, we should apprise other nations of the rationale for our proposed action and seek their understanding and cooperation.

-- The information on human rights which the U.S. uses to arrive at its judgments should be available to other IFI members to the extent possible.

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-- In the longer run we should develop a consensus among IFI member governments in support of our human rights policy and seek to persuade these governments that IFI managements and members should give great weight to human rights factors when assessing the suitability of proposed loan programs.

D. Use of Overseas Broadcast Facilities and Cultural and Educational Programs.

International awareness of the effort to preserve and extend human rights will, in itself, contribute to the success of our policy. That awareness can be increased by appropriate use of the facilities and programs of the United States Information Agency (USIA), Radio Free Europe, Radio Liberty and the State Department's cultural and educational programs. Domestic awareness and understanding of our policy can be promoted by the State Department's Bureau of Public Affairs.

1. USIA.

USIS posts abroad offer important opportunities available to the U.S. for the creation of intellectual, philosophical and (to at least a limited degree) political "infrastructure" in support of human rights. USIS posts are engaged in dialogue with influential elites and "establishments" -- as well as the next generation of leadership. Seminars, symposiums, relations with editorial writers, bar associations and the like offer important opportunities to kindle and sustain the spark of concern for group three rights, in particular.

The USIA, through its radio broadcast facilities, in print and via television, can present and elaborate our human rights concerns directly to audiences abroad. Although all communications media can and should be used, radio is our primary direct channel to mass audiences. Where other media are controlled, radio is particularly important. Coordinated, balanced and consistent future programming should develop the theme that human rights is a universal human aspiration, not an American idiosyncrasy, and should cover positive human rights developments, particularly outside the U.S., as well as the record of continuing violations of human rights.

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2. Radio Free Europe/Radio Liberty
(RFE/RL).

RFE and RL have played a key role in the rising awareness that has accompanied the expanding human rights movement in the Soviet Union and Eastern Europe. Human rights activists in Moscow, Warsaw and other cities frequently cite RFE/RL's extensive coverage as a vital source of information. In the future, the Radios will utilize the expansion of their technical facilities which has been proposed by the President to extend their human rights coverage to larger audiences. Another priority is to augment news-gathering and research capabilities, especially in Western Europe, for more detailed reporting of CSCE developments. The Radios also seek to give increased attention to human rights developments affecting the non-Russian nationalities of the Soviet Union.

3. Cultural and Educational Exchange.

The international exchange of persons program administered by the State Department's Bureau of Educational and Cultural Affairs (CU) conveys a human rights message to all foreign leaders who participate in it. Experience indicates that the overwhelming impression left with most visitors to this country is that the American people do care about human rights and that the United States does seek to protect and foster them. CU intends to give additional, more specific attention to human rights concerns. Objectives could include encouraging increased international activity among American non-governmental groups which have an interest in human rights, especially groups from the academic and journalistic communities, and strengthening CU relations with activities of the legal profession in international human rights endeavors.

E. Improved access to the U.S. for refugees and
dissidents.

In keeping with our overall objectives, we should demonstrate a generous, humanitarian policy of providing refuge to victims of repression. We should continue to support provisions in H.R. 7175 that would increase the authorized global number of conditional entries under the

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Immigration and Naturalization Act (INA) from 17,400 to 20,000 and admit additional refugees in emergent situations as conditional entrants, permitting them to adjust their status to that of permanent residence after two years.

We should oppose provisions in H.R. 7175 that would impose numerical limitations on the numbers of such refugees who may be admitted by the President in emergent situations under certain circumstances and the requirement that other countries must accept resettlement of their fair share of the refugees involved before the admission of such refugees into the United States.

We recommend a more liberal use of the Attorney General's authority to admit individual refugees and groups of refugees who do not qualify under the INA. Specifically, we believe that the Attorney General and the INS in considering applicants for parole into the United States should be more forthcoming with respect to innocent victims of authoritarian regimes. Such a change in policy would be a concrete demonstration of the sincerity of our commitment to human rights. While the process of consulting with Congressional leaders before using the parole authority is not required by law, we would want to notify them before liberalizing our policy. There is likely to be some negative Congressional reaction to a liberalized parole policy.

Dissidents in repressive countries, to the extent they may be able to proceed to free countries, should generally be considered as refugees. Most such dissidents would qualify as refugees under the new definition of refugees contained in the pending legislation that we support.

F. Substantive and Procedural Initiatives the U.S. Could Take in Various International Forums.

There are important advantages to pursuing our human rights objectives through multilateral institutions. Because of the clearly defined human rights responsibilities of multilateral organizations, examination of the human rights practices of all countries can be properly pursued and, since the responsibility for initiatives in multilateral

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bodies is shared, individual country situations can be considered in a manner less likely to bring the U.S. into direct confrontation with the country concerned.

Increased use of multilateral institutions will improve their capacity to deal effectively with human rights problems and enhance public support for them.

1. The United Nations.

The United Nations can be a valuable forum for developing multilateral cooperation on behalf of human rights. It has broad representation and mechanisms for protection of human rights. Specific documents such as the Charter, the Universal Declaration, and the UN human rights conventions express concerns and commitments in this field. Accordingly, we should expand and intensify our efforts at the UN and support and carry through on them in our bilateral relations and by ratifying promptly those conventions we support.

We should give careful consideration to taking the following human rights initiatives in the UN:

-- UNESCO Executive Board Session (September-October 1977).

Develop broader support for human rights issues by establishing an independent Expert Review Committee.

-- 32nd Session of the UN General Assembly (1977).

Conduct a major effort, in close consultation with other interested governments, to secure approval for the establishment of a UN High Commissioner for Human Rights. Propose the establishment of a special ad hoc Expert Committee on Torture to identify serious instances of torture worldwide.

-- Next Session of the UN Commission on Human Rights (Spring 1978).

Propose measures to strengthen procedures for instituting studies of situations involving consistent

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patterns of gross violations of internationally-recognized human rights. Press for an additional annual session of the Commission, to be held at UN headquarters in New York.

-- Decade for Action to Combat Racism and Racial Discrimination.

Continue to consult with key African delegations to help break the pattern whereby they link Zionism and racism. Our objective is to reach understanding on that issue before the World Conference to Combat Racism and Racial Discrimination so that the U.S. can attend that meeting, scheduled for August 1978.

2. Organization of American States.

The Inter-American Human Rights Commission, an independent agency of the OAS, is playing an increasingly central role in the struggle to defend human rights in the Western Hemisphere. We are working to increase the staff and budget of the IAHRC to cope with mounting human rights complaints. We shall submit the American Convention on Human Rights, which President Carter signed, to the Senate for approval.

IV. National Security Aspects of U.S. Policies on Human Rights, Including Consideration of Their Impact on Friendly States and Allies; and Other Areas of Major Strategic Concern Such as the PRC and the Koreas.

Section I(F) includes a brief discussion of the direction our policy should take with various groups of countries, including allied nations and Third World countries. The thesis underlying much of the discussion there and elsewhere in this study is that the shape that our policy ultimately takes with respect to individual countries will depend on our evaluation of (1) the human rights situation, (2) the full range of our interests,

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and (3) the leverage we have to encourage change where change is desired.

Invariably, working out our human rights approach in individual countries will require a careful balancing of considerations. The summary analysis of the impact of our human rights policy on our relations with the Soviet Union contained in Section I above concludes that we can pursue our human rights concerns and our security interests, which include maintaining a credible deterrent while pursuing arms control and arms reduction, in our long-term relationship with the Soviets. Full country evaluations are in preparation for the Soviet Union, the PRC, and South Korea, as well as other countries.

V. Action to Promote Integration of Human Rights Considerations into U.S. Foreign Policy.

The Executive Branch has already taken important steps to help assure implementation of the Administration's focus on human rights, but needs to do more. Steps taken so far include:

Interagency: Establishment of the Interagency Group on Human Rights and Foreign Assistance, pursuant to an NSC memorandum dated April 1, 1977. Chaired by the State Department, this group includes representatives from the NSC, State, Treasury, DOD and AID. Its mandate is to coordinate the development and implementation of U.S. human rights policy as it relates to bilateral and multi-lateral economic and security assistance programs. With respect to security assistance, the recently-created interagency Arms Export Control Board will take human rights factors into consideration in its deliberations.

State Department: The Office of the Coordinator for Human Rights and Humanitarian Affairs has been expanded. A Human Rights Coordinating Group, chaired by the Deputy Secretary of State, functions to provide balance and consistency for all aspects of U.S. policy on human rights. All U.S. mission chiefs have been instructed to give their personal attention to furthering observance of human rights in their host countries, to provide frequent reporting on

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human rights, and to assure full mission involvement in the implementation of our human rights policy. Priority attention, here and at posts abroad, is being given to the collection and analysis of comprehensive data concerning human rights conditions in all countries, as well as the development of country strategies. Fulltime human rights officers in each of the Department's regional bureaus and full or near fulltime human rights officers in each of the Department's functional bureaus have been designated. They are responsible for monitoring human rights concerns within their bureaus, coordinating with the Department's Office of Human Rights and Humanitarian Affairs, and relating bureau actions on human rights to actions taken elsewhere in the foreign affairs agencies.

Next steps could include expansion of the mandate of the Interagency Group on Human Rights and Foreign Assistance to include all aspects of our human rights policy, not simply foreign assistance. That expanded purview would promote greater coordination of our human rights policy within the Executive Branch.

VI. A Strategy to Improve the Administration's Relations with Congress in the Human Rights Area.

A separate analysis of this important issue is being prepared by the Congressional Liaison Offices of the agencies involved with the Congress on human rights questions.

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